

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA, ex rel. J.
WILLIAM BOOKWALTER, III, M.D.; ROBERT
J. SCLABASSI, M.D.; and ANNA MITINA,

Plaintiffs,

v.

UPMC; UPP, INC. d/b/a UPP DEPARTMENT OF
NEUROSURGERY,

Defendants.

Civil Action No. 2:12-cv-145

ORDER OF DISMISSAL AS TO CERTAIN CLAIMS

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the False Claims Act, 31 U.S.C. § 3730(b)(1), the United States, Relators J. William Bookwalter, III, M.D., Robert J. Sclabassi, M.D., and Anna Mitina ("Relators"), and the University of Pittsburgh Medical Center ("UPMC"), the University of Pittsburgh Physicians ("UPP"), UPMC Community Medicine, Inc. ("CMI"), and Tri-State Neurosurgical Associates-UPMC, Inc. ("Tri-State") (collectively "the UPMC Parties") filed a Stipulation of Dismissal as to Certain Claims. Upon due consideration of the Stipulation,

IT IS HEREBY ORDERED that,

1. Consistent with the terms of the Settlement Agreement executed by the United States, Relators, and the UPMC Parties, all claims asserted on behalf of the United States against the UPMC Parties in Case No. 2:12-cv-00145 concerning the Covered Conduct as described in

Recitals Paragraph E of the Settlement Agreement and reproduced in paragraph 2 below are DISMISSED WITH PREJUDICE.

2. Covered Conduct is described in Recitals Paragraph E of the Settlement Agreement as follows:

The United States alleges that during the period January 1, 2006 through May 31, 2015, the UPMC Parties submitted or caused to be submitted to the United States claims for physician services purportedly performed directly by certain neurosurgeons employed by UPP, CMI or Tristate, which claims identified those surgeons as assistants-at surgery or as attending surgeons, when in fact those neurosurgeons had not performed the range of services required to support the claim for physician services, because: (a) the neurosurgeon had not participated in each aspect of a surgery for which the UPMC Parties billed that neurosurgeon as an assistant; (b) the neurosurgeon did not participate to the degree required by applicable regulations to support the procedure codes billed in procedures performed by others, including residents, fellows and physician assistants; and/or (c) when performing multi-level laminectomies, the neurosurgeon referenced in the Disclosure performed the procedure on fewer levels than reflected on CMI's claims for those services. The United States alleges that claims submitted for these physician services resulted in more reimbursement than would have been paid had the claims accurately reflected the services the neurosurgeons performed.

3. No other claim or allegation other than those specifically identified in the Stipulation shall be dismissed at this time.

4. Dismissal is without prejudice to (a) claims Relators may have against the UPMC Parties to entitlement under 31 U.S.C. § 3730(d) to expenses, attorneys' fees, and costs and (b) the right of UPMC Parties to challenge or seek dismissal of Relators' claims to recover expenses, attorneys' fees, and costs on any grounds.

Done this 18th day of July, 2016.

s/Cathy Bissoon
UNITED STATES DISTRICT JUDGE

cc:

Colin J. Callahan
Assistant United States Attorney
U.S. Post Office and Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Tel: (412) 894-7426

STEPHEN A. LONEY, JR. (Pa. No. 202535)
stephen.loney@hoganlovells.com
1835 Market Street, 29th Floor
Philadelphia, PA 19103
267-675-4600
267-675-4601 (Fax)

Jonathan L. Diesenhaus, *pro hac vice*
jonathan.diesenhaus@hoganlovells.com
202-637-5416

Mitchell J. Lazris, *pro hac vice*
mitch.lazris@hoganlovells.com
202-637-5863

HOGAN LOVELLS US LLP
555 13th Street, NW
Washington, DC 20004

Stephen J. Del Sole (Pa. No. 73460)
Patrick K. Cavanaugh (Pa. No. 72960)
Del Sole Cavanaugh Stroyd LLC
200 1st Avenue, Suite 300
Pittsburgh, PA 15222
Tel: 412-261-2393
Fax: 412-261-2110
sdelsole@dsclaw.com

Andrew M. Stone (Pa. No. 35176)
STONE LAW FIRM, LLC
437 Grant Street, Suite 1806
Pittsburgh, PA 15219
Tel: 412-391-2005
Fax: 412-391-0853
astone@stone-law-firm.com

Jamie M. Bennett
THE SHEPARD LAW FIRM, LLC
1406B Crain Highway South, Suite 102
Glen Burnie, MD 21061

G. Mark Simpson
SIMPSON LAW FIRM, LLC
110 Habersham Drive, Suite 108
Fayetteville, GA 30214
Tel: (770) 371-5008
Fax: (678) 302-8721
mark@marksimpsonlaw.com